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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 Diversified Lenders, LLC, an Oklahoma
11 limited liability company,

12 Plaintiff,

13 v.

14 Amazon Logistics, Inc., a Delaware
15 corporation; Vertical Holdings Unlimited,
16 LLC, a Florida limited liability company
17 doing business as VHU Express,

18 Defendants.

Case No. 16-cv-1232-RSL

DEFENDANT AND CROSS-CLAIMANT
AMAZON LOGISTICS, INC.'S
AMENDED ANSWER, DEFENSES, AND
CROSS-CLAIM

19 Amazon Logistics, Inc., Cross-Claim
20 Plaintiff,

21 v.

22 Vertical Holdings Unlimited, LLC, Cross-
23 Claim Defendant.

24 Defendant Amazon Logistics, Inc. ("Amazon" or "Defendant") by and through its
25 counsel of record, answers Plaintiff Diversified Lenders, LLC's Complaint ("Complaint"), and
26 asserts cross-claims against Defendant/Cross-Claim Defendant Vertical Holdings Unlimited,
LLC ("VHU") as follows:

DEFENDANT AND CROSS-CLAIMANT AMAZON LOGISTICS, INC.'S AMENDED
ANSWER, DEFENSES, AND CROSS-CLAIM - 1
(USDC WDWA Case No. 16-cv-01232-RSL)

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ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 **JURISDICTION**

2 1. Amazon admits that it is a corporation incorporated in Delaware with its primary
3 place of business in Seattle, Washington. Amazon takes the position that the District Court for
4 the M.D. Florida's diversity jurisdiction under 28 U.S.C. § 1332(a) is now moot given that the
5 case has been transferred to the District Court for the W.D. Washington. Amazon lacks
6 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
7 set forth in this paragraph, and therefore denies the same. Amazon affirmatively states that
8 under the express terms of the Delivery Provider Terms of Service between Amazon and VHU,
9 VHU agreed to submit to venue and exclusive jurisdiction in the federal and state courts in
10 King County, Washington. Amazon further affirmatively states that under UCC § 9-404(a)(1)
11 and (2) and subsection (b), the rights of Diversified as purported assignee are subject to all
12 terms of the Delivery Provider Terms of Service between Amazon and VHU, including
13 agreement to venue and exclusive jurisdiction in Washington.

14 2. While not disputing the Court's jurisdiction under 28 U.S.C. § 1332(a), Amazon
15 admits that, on information and belief, the amount in controversy exceeds \$75,000.

16 3. Amazon lacks knowledge or information of the claims over which Plaintiff asserts
17 the Court has supplemental jurisdiction, and therefore denies the same.

18 **VENUE**

19 4. Amazon admits that as between Diversified and VHU, venue is proper under 28
20 U.S.C. § 1391(b)(1) because, on information and belief, VHU is a Florida company. Amazon
21 further admits that it entered into the Delivery Provider Terms of Service with VHU. Amazon
22 affirmatively states, however, that under the express terms of the Delivery Provider Terms of
23 Service, VHU agreed to submit to venue and exclusive jurisdiction in the federal and state courts
24 in King County, Washington. Amazon further affirmatively states that under UCC § 9-404(a)(1)
25 and (2) and subsection (b), the rights of Diversified as purported assignee are subject to all terms
26 of the Delivery Provider Terms of Service between Amazon and VHU, including agreement to

1 venue and exclusive jurisdiction in Washington. Amazon further affirmatively states that it
2 moved to transfer venue to the W.D. Washington, and that motion was granted. Amazon denies
3 all remaining allegations contained in Paragraph 4 of the Complaint.

4 5. Amazon lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations set forth in this paragraph, and therefore denies the same.

6 6. Amazon admits that it is a Delaware company with its primary place of business
7 in Seattle, Washington. The second sentence of paragraph 6 is a legal conclusion to which no
8 response is required. To the extent a response is required, Amazon denies the same.

9 7. Amazon lacks knowledge or information sufficient to form a belief as to the truth
10 of the allegations set forth in this paragraph, and therefore denies the same.

11 8. Amazon denies the allegations set forth in this paragraph.

12 **COUNT I - AMAZON'S ALLEGED BREACH OF STATUTORY DUTY**

13 To the extent the introductory sentence to Plaintiff's assertion of Count I contains a legal
14 conclusion or requires any response, Amazon denies the same.

15 9. Amazon incorporates all preceding paragraphs by reference.

16 10. Amazon admits that Diversified has presented the Loan Documents described in
17 this paragraph which speak for themselves. To the extent that the allegations set forth in
18 paragraph 10 are legal conclusions, Amazon denies the same. Amazon lacks knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations set forth in this
20 paragraph, and therefore denies the same.

21 11. Amazon admits that Diversified attached a document addressed generically to
22 "Controller/Manager" and dated April 28, 2015, as Exhibit 1 to the Complaint, which speaks for
23 itself. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations set forth in this paragraph, and therefore denies the same.

25 12. Amazon admits that Diversified attached a document addressed generically to
26 "Controller/Manager" and dated September 30, 2015, as Exhibit 2 to the Complaint, which

1 speaks for itself. Amazon lacks knowledge or information sufficient to form a belief as to the
2 truth of the remaining allegations set forth in this paragraph, and therefore denies the same.

3 13. The allegations contained in paragraph 13 are legal conclusions to which no
4 response is required. To the extent a response is required, Amazon denies the same. Amazon
5 denies that the invoices alleged are legitimate or accurate. Amazon lacks knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations set forth in this
7 paragraph, and therefore denies the same.

8 14. Amazon denies the allegations set forth in this paragraph.

9 15. The allegations contained in paragraph 15 are legal conclusions to which no
10 response is required. To the extent a response is required, Amazon denies the same.

11 16. The allegations contained in paragraph 16 are legal conclusions to which no
12 response is required. To the extent a response is required, Amazon denies the same. Amazon
13 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations set forth in this paragraph, and therefore denies the same.

15 17. Amazon denies the allegations set forth in this paragraph.

16 18. Amazon denies the allegations set forth in this paragraph.

17 To the extent the conclusory sentence to Plaintiff's Count I contains a legal conclusion or
18 requires any response, Amazon denies the same.

19 **COUNT II - VHU'S ALLEGED BREACH OF CONTRACT**

20 19. Amazon incorporates all preceding paragraphs by reference.

21 20. Amazon lacks knowledge or information sufficient to form a belief as to the truth
22 of the remaining allegations set forth in this paragraph, and therefore denies the same.

23 21. Amazon lacks knowledge or information sufficient to form a belief as to the truth
24 of the remaining allegations set forth in this paragraph, and therefore denies the same.

25 22. Amazon lacks knowledge or information sufficient to form a belief as to the truth
26 of the remaining allegations set forth in this paragraph, and therefore denies the same.

23. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph, and therefore denies the same.

24. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph, and therefore denies the same.

AFFIRMATIVE AND ADDITIONAL DEFENSES

1. Diversified fails to state a claim against Amazon upon which relief may be granted.

2. To the extent Amazon had obligations under Uniform Commercial Code § 9-406, Amazon complied with its obligations.

3. To the extent Diversified seeks damages for amounts not due or owing to VHU in the first instance, or damages for amounts already paid to VHU or others on behalf of VHU, such damages are barred.

4. To the extent Diversified suffered any damages, such damages are barred or should be offset by the amounts Amazon paid to Diversified.

5. To the extent Diversified suffered any damages, such damages are barred or should be offset by the amounts Amazon paid to the State of Florida, the State of Massachusetts, or individuals, to address claims against VHU. With respect to claims for unpaid wages asserted by VHU employees, as between Amazon and VHU, VHU is contractually responsible to pay all such claims in full.

6. Under UCC § 9-404(a)(1) and (2) and subsection (b), the rights of Diversified as purported assignee are subject to all terms of the Delivery Provider Terms of Service between Amazon and VHU. As such:

a. Venue as to Diversified's claims against Amazon should be transferred to the U.S. District Court for the W.D. Washington.

b. Diversified's claims are barred, in whole or in part, by VHU's failure to obtain Amazon's prior written consent before purportedly assigning its

rights or obligations under VHU's Delivery Provider Terms of Service and any Work Orders.

c. To the extent the alleged damages asserted by Diversified accrued before assignment, if any, Diversified's claims against Amazon are precluded.

7. To the extent Diversified suffered any damages, such damages are barred or limited by its failure to mitigate.

Amazon reserves the right to assert additional and revised defenses discovered during the pendency of this action.

AMAZON'S CROSS-CLAIMS

COMES NOW Amazon and alleges as follows against Cross-Claim Defendant Vertical Holdings Unlimited, LLC d/b/a VHU Express ("VHU"):

1. Amazon incorporates preceding paragraphs by reference.

2. Amazon is a Delaware corporation with its primary place of business in Seattle, Washington.

3. On information and belief, VHU is a Florida limited liability company with its primary place of business in Florida.

4. Amazon entered into the Delivery Provider Terms of Service with VHU on or about March 9, 2015.

5. Under the Delivery Provider Terms of Service, VHU waived all objections to venue and jurisdiction and consented to venue and exclusive jurisdiction of Washington courts for any disputes arising out of or relating to the Delivery Provider Terms of Service, any Work Order or Services, as defined by the Terms of Service. Venue is thus proper in the U.S. District Court for the Western District of Washington. Amazon intends to move to transfer venue to the W.D. Washington.

6. Consistent with the Delivery Provider Terms of Service and applicable Work Orders and invoices, Amazon made payments to VHU for services provided.

1 7. In or around March 2016, Amazon exercised its right to offset payments
2 otherwise due to VHU by making payments to the State of Florida Department of Labor, the
3 Attorney General for the State of Massachusetts, and individuals to address claims against VHU.

4 **DECLARATORY JUDGMENT**

5 8. Amazon incorporates by reference all preceding paragraphs.

6 9. The Delivery Provider Terms of Service provide that VHU is required to defend,
7 indemnify, and hold harmless Amazon from any third-party allegation or claim based on any
8 “loss, damage, settlement, cost, expense and any other liability” arising out of or in connection
9 with VHU’s alleged misconduct, breach of the Delivery Provider Terms of Service, or any
10 allegation or claim that VHU failed to comply with applicable Law.

11 10. Diversified’s claim against Amazon arises from VHU’s apparent
12 misrepresentations and breach of its obligations to Diversified. Diversified’s claim against
13 Amazon is subject to defense and indemnification by VHU.

14 11. Amazon notified VHU of its demand for defense and indemnification.

15 12. There is a dispute between Amazon and VHU as to whether VHU is required to
16 defend and indemnify Amazon against Diversified’s claims. Amazon seeks a declaratory
17 judgment that VHU is required to defend and indemnify Amazon against all claims asserted by
18 Diversified in this action.

19 **LIABILITY OF VHU UNDER CONTRACT AND**
20 **UNIFORM COMMERCIAL CODE**

21 13. Amazon incorporates by reference all preceding paragraphs.

22 14. Under the Delivery Provider Terms of Service and UCC § 9-404(a)(1) and (2) and
23 subsection (b), VHU is liable to Diversified for any and all payments made by Amazon to VHU
24 or on VHU’s behalf. With respect to claims for unpaid wages asserted by VHU employees, as
25 between Amazon and VHU, VHU is contractually responsible to pay all such claims in full.

1 Amazon is entitled to recoup any amounts, claimed against Amazon, that VHU was required to
2 pay VHU employees.

3 **PRAYER FOR RELIEF**

4 Wherefore Amazon requests judgment on its cross-claim and seeks relief against Plaintiff
5 as follows:

6 A. Judgment in Amazon's favor on Plaintiff's claims and against Cross-Claim
7 Defendant VHU on Amazon's cross-claims;

8 B. Attorney's fees and costs, to the extent recoverable; and

9 C. Any other relief that the Court finds just and proper.

10
11 Date: September 19, 2016

Respectfully Submitted,

12
13 s/ Reed W. Morgan

Vanessa S. Power

14 Reed W. Morgan, *pro hac vice*

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19 *Attorneys for Defendant*

20 *Amazon Logistics, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 19, 2016, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 following:

5 **Attorneys for Plaintiff Diversified Lenders, LLC:**

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17 s/ Alexa Kim

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